

FILED

Alexander Bykhovsky
Defendant Pro Se
40 Calle Elbrus
Panama City, Panama 0801

2024 MAR -6 PM 3:16

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: 

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JORGE ALEJANDRO ROJAS,

Plaintiff,

v.

BOTTOM LINE CONCEPTS, LLC,
JOSHUA FOX, UNPLUGGED MEDIA,
LLC, and ALEXANDER BYKHOVSKY,
Defendants,

Civil Case No.: 2:23-cv-02667-SPG-KSx

District Judge Sherilyn Peace Garnett
Magistrate Judge Karen L. Stevenson

**DEFENDANT ALEXANDER BYKHOVSKY'S MOTION TO DISMISS
PLAINTIFF JORGE ALEJANDRO ROJAS's FIRST AMENDED COMPLAINT
FOR LACK OF PERSONAL JURISDICTION OR IN THE ALTERNATIVE TO
STRIKE PLAINTIFF'S SERVICE OF PROCESS OF DEFENDANT
BYKHOVSKY**

Defendant Alexander Bykhovsky ("Bykhovsky") moves this Honorable Court to grant his Motion to Dismiss Plaintiff's First Amended Complaint ("FAC") pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction. In the

1 alternative, Bykhovsky moves to strike Plaintiff's service of process of Defendant
2 Bykhovsky.

3
4 **I. INTRODUCTION**

5 Plaintiff fails to state any viable claims under the Telephone Consumer
6 Protection Act, ("TCPA") 47 U.S.C. § 227, against Defendant Bykhovsky for one simple
7 reason: Plaintiff alleges that Bykhovsky is not a citizen of California and Plaintiff does
8 not allege any personal participation in the alleged activities that could conceivably allow
9 this court to exercise jurisdiction over Bykhovsky. This Court does not have personal
10 jurisdiction over Bykhovsky. Bykhovsky is a Panama resident.
11
12

13 **II. THE ALLEGED FACTS**

14 Plaintiff alleges he received TCPA-violating phone calls placed by Unplugged
15 Media, LLC. (FAC ¶ 62). Plaintiffs allege these phone calls were prerecorded in nature
16 and also were received by phone numbers registered to the National Do-Not-Call
17 Registry.
18

19
20 **III. ARGUMENT – PLAINTIFFS' COMPLAINT FAILS TO ALLEGE**
21 **FACTS DEMONSTRATING THIS COURT HAS JURISDICTION OVER**
22 **BYKHOVSKY**

23 **A. Legal Standards Applicable to the Court's Exercise of Personal Jurisdiction**

24 Federal Courts may exercise personal jurisdiction over a nonresident defendant so
25 long as state law confers such jurisdiction, and its exercise comports with due process
26 under the Constitution. Due process permits the exercise of personal jurisdiction over a
27
28

1 nonresident defendant where the defendant has purposefully established “minimum
2 contacts” with the forum state such that maintenance of the suit does not offend
3 traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*,
4 326 U.S. 310, 316 (1945).

6 Under this standard, the minimum contacts of the nonresident defendant may
7 establish either “general” or “specific” jurisdiction. A Court has general personal
8 jurisdiction over a nonresident defendant “when defendant’s affiliations with the state are
9 so continuous and systematic as to render [the defendant] essentially at home in the
10 forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014).

13 Plaintiff bears the burden of establishing a prima facie case of personal
14 jurisdiction. Here Plaintiff has not even attempted to make any case that this Court could
15 exercise jurisdiction over Defendant Bykhovsky. Plaintiff does not allege a single
16 sentence in their FAC that accuses Bykhovsky of having any personal involvement at all
17 in the alleged activities. The closest Plaintiff comes to alleging personal involvement in
18 the calls alleged in Plaintiff’s FAC is that “Bykhovsky engaged in the operation of the
19 telemarketing scheme.” FAC ¶ 150. This threadbare accusation does not come close to
20 meeting the burden of establishing Defendant Bykhovsky personally participated in the
21 calls alleged herein.

25 Plaintiff does not allege any contact with the State of California by Defendant
26 Bykhovsky. Plaintiff does not allege any contacts with the State of California that were
27
28

1 directed by Defendant Bykhovsky. Due process permits the exercise of jurisdiction over
2 a defendant where the defendant has purposefully established “minimum contacts” with
3 the forum state. There is not a single contact with the forum state that has been alleged to
4 have been made by Defendant Bykhovsky in Plaintiff’s FAC. There is not a single
5 factual allegation contained in the FAC through which Plaintiff has plausibly pled that
6 California can somehow exercise personal jurisdiction over Defendant Bykhovsky, a
7 Panama resident.
8
9

10 **IV. BYKHOVSKY IS A PANAMA RESIDENT AND THE INTER-**
11 **AMERICAN SERVICE CONVENTION AND ADDITIONAL**
12 **PROTOCOL MANDATES HOW SERVICE OF PROCESS IS TO**
13 **OCCUR BETWEEN SIGNATORIES TO THE MULTILATERAL**
14 **TREATY**

15 Panama is a signatory to the Inter-American Service Convention and Additional
16 Protocol. This is a multilateral treaty between the member nations that includes the
17 United States and Panama. As such, the service of process is governed by an ongoing
18 Treaty. This multilateral treaty outlines the ONLY (emphasis added) ways in which a
19 Panama resident can be served process by a party to the treaty. Plaintiff is required to file
20 form USM-272 Request for Service Abroad of Judicial Extrajudicial Documents Pursuant
21 to the Additional Protocol to the Inter-America Convention on Letters Rogatory.
22 Plaintiff did not follow the process that is mandated by the treaty. Instead, Plaintiff
23 sought relief from the Court and asked for permission to serve Defendant via email
24
25
26
27
28

1 Email service was improper under Panamanian law and the Court did not have
2 authority to override the Inter-American Service Convention and Additional Protocol
3 treaty. There was no basis in law for the Court to grant Plaintiff's request to bypass the
4 treaty that governs service of process between the United States and Panama.
5 Furthermore, even if the Court believed it had the authority to override the treaty between
6 the United States and Panama, the Court must do so in a manner that is consistent with
7 Panamanian law. Panama does not allow the service of process via email. Therefore, the
8 Court could not grant Plaintiff's request to serve Defendant via email. Plaintiff
9 respectfully asks the Court to strike the Process of Service as it was improper and
10 violated the multilateral treaty that both the United States and Panama are signatories to.

11
12
13
14 V. CONCLUSION

15 For the reasons set forth above, Bykhovsky respectfully requests that the Court
16 grant his motion to dismiss or in the alternative strike the service of process.
17
18
19
20

21 Submitted By,

22 

23 Alexander Bykhovsky
24 Defendant Pro Se
25 40 Calle Elbrus
26 Panama City, Panama 0801
27
28